

AMENDED IN SENATE AUGUST 18, 2011

AMENDED IN SENATE JULY 14, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 152**

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**Introduced by Assembly Member Fuentes**

**(Coauthors: Assembly Members Achadjian, *Fletcher*, and Harkey)**

(Coauthors: Senators Hancock and Padilla)

January 18, 2011

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An act to add Section 131057.5 to the Health and Safety Code, to add and repeal Sections 17053.88 and 23688 of the Revenue and Taxation Code, and to add Chapter 14.5 (commencing with Section 18995) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to food banks.

### LEGISLATIVE COUNSEL'S DIGEST

AB 152, as amended, Fuentes. Food banks: grants: voluntary contributions: income tax credits.

(1) Existing law establishes the scope of functions and responsibilities of the State Department of Public Health.

This bill would additionally require the State Department of Public Health to investigate and apply for federal funding opportunities regarding promoting healthy eating and preventing obesity, as specified,

and, upon receipt of that funding, allow the department to award grants and provide in-kind support to support local assistance to local governments ~~and~~, nonprofit organizations, *and local education agencies* that encourage specified healthy eating programs, as provided.

(2) Existing federal law, the Emergency Food Assistance Program, is administered by the State Department of Social Services to provide agricultural commodities to eligible households and recipient agencies for distribution, as prescribed.

This bill would require the State Department of Social Services, on and after January 1, 2012, to establish and administer the State Emergency Food Assistance Program (SEFAP), to provide emergency food and funding for the provision of emergency food *to food banks*, as provided. This bill would create the State Emergency Food Assistance Program Account and would, upon appropriation by the Legislature, allocate the moneys in the account to SEFAP and require that those moneys be used for the purchase, storage, and transportation of food grown or produced in California, *as prescribed, and for the department's administrative costs*.

(3) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, and before January 1, 2017, allow, without regard to the taxpayer's method of accounting, a credit for qualified taxpayers, as defined, in an amount equal to 10% of the cost that would otherwise be included in inventory costs, as specified, with respect to the donation of fresh fruits or fresh vegetables to food banks located in California.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) On December 16, 2010, the State Board of Food and
- 4 Agriculture released the strategic plan for the future of the state's
- 5 agriculture and food system entitled "California Agricultural
- 6 Vision: Strategies for Sustainability," which defines 12 key
- 7 strategies for California's agriculture and food sector, including a
- 8 strategy to improve access to safe, healthy food for all Californians
- 9 in order to reduce hunger and malnutrition, chronic diseases, and

1 health care costs associated with poor diets, and expand markets  
2 for fruits, vegetables, grains, dairy, and meat grown and produced  
3 in California.

4 (b) On December 3, 2010, the California Strategic Growth  
5 Council accepted the first report of the Health in All Policies Task  
6 Force, established by Executive Order S-04-10 of Governor Arnold  
7 Schwarzenegger on February 23, 2010, which includes a goal that  
8 every California resident has access to healthy, affordable food at  
9 school, at work, and in his or her neighborhood.

10 (c) California has some of the most productive farmlands in the  
11 world. California's farmlands produce more than 350 commodities,  
12 specialty crops, and other food items. These farmlands are essential  
13 for providing a healthy food supply and guarantee a natural  
14 resource for California's future generations.

15 (d) According to a University of California at Los Angeles  
16 survey of Californians' health status, despite the state's agricultural  
17 abundance, more than 8 million people live in a household where  
18 an adult cannot always afford enough food.

19 (e) Californians who experience hunger and food insecurity  
20 suffer from poor physical and emotional health, as well as a  
21 diminished capacity to learn and succeed in the workplace.

22 (f) Access to healthy food is a basic human right. Low  
23 consumption and lack of access to healthy, affordable food may  
24 result in higher levels of obesity and other diet-related diseases.

25 (g) One in every nine California children, one in three teens,  
26 and over half of adults are overweight or obese. The obesity  
27 epidemic affects virtually all age, income, educational, ethnic, and  
28 disability groups in California, and rates are highest among  
29 Californians of Latino, American-Indian, African American, and  
30 Pacific Islander descent, Californians from lower income  
31 households, and those with disabilities. More than 30 percent of  
32 low-income California children and teens are overweight or obese.

33 (h) The growing epidemic of overweight individuals is due to  
34 poor diet and physical inactivity, putting growing numbers of  
35 Californians at risk for type 2 diabetes, hypertension, heart disease,  
36 stroke, and cancer. Increased risk of chronic disease has been  
37 attributed to low fruit and vegetable intake in the United States,  
38 accounting for \$30 billion in associated health care costs in 2008  
39 and 2009.

1 (i) According to the federal Centers for Disease Control and  
2 Prevention, in 2009 less than 20 percent of young people and 23  
3 percent of all American adults reported consuming the minimum  
4 goal of five servings of fruits and vegetables each day.

5 (j) In California, partnerships between private and public entities,  
6 among state and local government, local and regional businesses,  
7 nonprofit organizations, health care institutions, food banks, and  
8 other emergency food providers have helped to establish  
9 community programs to combat obesity and related diseases,  
10 increase access to healthy food, promote healthy eating, increase  
11 consumption of fruits and vegetables, and encourage physical  
12 activity.

13 (k) It is in the interest of the state to support programs that  
14 promote increased access to healthy food and increased  
15 consumption of California-grown fresh fruits and vegetables, whole  
16 grains, and low-fat dairy in order to improve child and adult  
17 nutrition, promote a strong, healthy workforce, and strengthen  
18 local and regional farm economies.

19 (l) With the significant fiscal challenges in California, it is  
20 further in the interest of the state to maximize the availability of  
21 federal funding in California in order to support programs and  
22 activities that prevent obesity and hunger and increase access to  
23 healthy food and consumption of healthy food.

24 (m) It is further in the interest of the state to encourage and  
25 facilitate partnerships between public and private entities to  
26 promote a comprehensive approach to nutrition and wellness,  
27 including activities that reduce obesity and related diseases,  
28 encourage physical activity, and provide nutrition education in  
29 order to ensure that all Californians have access to healthy food  
30 and can choose a healthy diet.

31 SEC. 2. Section 131057.5 is added to the Health and Safety  
32 Code, to read:

33 131057.5. (a) The State Department of Public Health shall  
34 investigate and apply for federal funding opportunities regarding  
35 promoting healthy eating and preventing obesity, including, *but*  
36 *not limited to*, those available under the federal Food, Conservation,  
37 and Energy Act of 2008 (Public Law 110-234), ~~the federal~~  
38 ~~American Recovery and Reinvestment Act of 2009 (Public Law~~  
39 ~~111-5)~~, the federal Patient Protection and Affordable Care Act

(Public Law 111-148), and the federal Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296).

(b) Upon receipt of federal funding regarding promoting healthy eating and preventing obesity, the State Department of Public Health may, in its sole discretion, provide in-kind support and award grants to support local assistance to local governments ~~and~~, nonprofit organizations, *and local education agencies* that the department deems eligible to encourage the sale and consumption of fresh fruits and vegetables, implement programs and initiatives that prevent obesity and hunger, and promote healthy eating and access to nutritious food in underserved and urban and rural communities. The award of these grants shall be exempt from the State Contract Act (Part 2 (commencing with Section 10100)) of Division 2 of the Public Contract Code.

SEC. 3. Section 17053.88 is added to the Revenue and Taxation Code, to read:

17053.88. (a) In the case of a qualified taxpayer who donates fresh fruits or fresh vegetables to a food bank located in California under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for taxable years beginning on or after January 1, 2012, and before January 1, 2017, there shall be allowed, without regard to the taxpayer's method of accounting, as a credit against the "net tax" (as defined by Section 17039), an amount equal to 10 percent of the cost that would otherwise be included in inventory costs under Section 263A of the Internal Revenue Code, or that would be required to be included in inventory costs under Section 263A of the Internal Revenue Code, but for the exception for farming businesses contained in Section 263A(d) of the Internal Revenue Code, with respect to those fresh fruits or fresh vegetables.

(b) For purposes of this section, "qualified taxpayer" means the person responsible for planting a crop, managing the crop, and harvesting the crop from land.

(c) If the credit allowed by this section is claimed by the qualified taxpayer, any deduction otherwise allowed under this part for that amount of the cost paid or incurred by the qualified taxpayer that is eligible for the credit shall be reduced by the amount of the credit provided in subdivision (a).

(d) The donor shall provide to the nonprofit organization the estimated value of the donated fresh fruits or fresh vegetables and

1 information regarding the origin of where the donated fruits or  
2 vegetables were grown, and upon receipt of the donated fresh fruits  
3 or fresh vegetables, the nonprofit organization shall provide a  
4 certificate to the donor. The certificate shall contain a statement  
5 signed and dated by a person authorized by that organization that  
6 the product is donated under Chapter 5 (commencing with Section  
7 58501) of Part 1 of Division 21 of the Food and Agricultural Code.  
8 The certificate shall also contain the type and quantity of product  
9 donated, the name of donor or donors, the name and address of  
10 the donee nonprofit organization, and, as provided by the donor,  
11 the estimated value of the donated fresh fruits or fresh vegetables  
12 and its origins. Upon the request of the Franchise Tax Board, the  
13 qualified taxpayer shall provide a copy of the certification to the  
14 Franchise Tax Board.

15 (e) In the case where the credit allowed by this section exceeds  
16 the “net tax,” the excess may be carried over to reduce the “net  
17 tax” in the following year, and for the six succeeding years if  
18 necessary, until the credit has been exhausted.

19 (f) Using the information available to the Franchise Tax Board  
20 from the certificates required under subdivision (d) and subdivision  
21 (d) of Section 23688, the Franchise Tax Board shall report to the  
22 Legislature on or before December 1, 2014, and each December  
23 1 thereafter until the inoperative date specified in subdivision (g),  
24 regarding the utilization of the credit authorized by this section  
25 and Section 23688. The Franchise Tax Board shall also include in  
26 the report the ~~type and quantity of~~ *estimated value of the* fresh  
27 fruits and fresh vegetables donated, ~~the estimated value of those~~  
28 ~~products~~, the county in which the products originated, ~~the county~~  
29 ~~in which the donation was made~~, and the month the donation was  
30 made.

31 (g) (1) A report to be submitted pursuant to subdivision (f) shall  
32 be submitted in compliance with Section 9795 of the Government  
33 Code.

34 (2) The requirement for submitting a report imposed under  
35 subdivision (f) is inoperative on January 1, 2016, pursuant to  
36 Section 10231.5 of the Government Code.

37 (h) This section shall remain in effect only until December 1,  
38 2017, and as of that date is repealed.

39 SEC. 4. Section 23688 is added to the Revenue and Taxation  
40 Code, to read:

1     23688. (a) In the case of a qualified taxpayer who donates  
2 fresh fruits or fresh vegetables to a food bank located in California  
3 under Chapter 5 (commencing with Section 58501) of Part 1 of  
4 Division 21 of the Food and Agricultural Code, for taxable years  
5 beginning on or after January 1, 2012, and before January 1, 2017,  
6 there shall be allowed, without regard to the taxpayer's method of  
7 accounting, as a credit against the "tax" (as defined by Section  
8 23036), an amount equal to 10 percent of the cost that would  
9 otherwise be included in inventory costs under Section 263A of  
10 the Internal Revenue Code, or that would be required to be included  
11 in inventory costs under Section 263A of the Internal Revenue  
12 Code, but for the exception for farming businesses contained in  
13 Section 263A(d) of the Internal Revenue Code, with respect to  
14 those fresh fruits or fresh vegetables.

15     (b) For purposes of this section, "qualified taxpayer" means the  
16 person responsible for planting a crop, managing the crop, and  
17 harvesting the crop from land.

18     (c) If the credit allowed by this section is claimed by the  
19 qualified taxpayer, any deduction otherwise allowed under this  
20 part for that amount of the cost paid or incurred by the qualified  
21 taxpayer that is eligible for the credit shall be reduced by the  
22 amount of the credit provided in subdivision (a).

23     (d) The donor shall provide to the nonprofit organization the  
24 estimated value of the donated fresh fruits or fresh vegetables and  
25 information regarding the origin of where the donated fruits or  
26 vegetables were grown, and upon receipt of the donated fresh fruits  
27 or fresh vegetables, the nonprofit organization shall provide a  
28 certificate to the donor. The certificate shall contain a statement  
29 signed and dated by a person authorized by that organization that  
30 the product is donated under Chapter 5 (commencing with Section  
31 58501) of Part 1 of Division 21 of the Food and Agricultural Code.  
32 The certificate shall also contain the type and quantity of product  
33 donated, the name of donor or donors, the name and address of  
34 the donee nonprofit organization, and, as provided by the donor,  
35 the estimated value of the donated fresh fruits or fresh vegetables  
36 and its origins. Upon the request of the Franchise Tax Board, the  
37 qualified taxpayer shall provide a copy of the certification to the  
38 Franchise Tax Board.

39     (e) In the case where the credit allowed by this section exceeds  
40 the "tax," the excess may be carried over to reduce the "tax" in

1 the following year, and for the six succeeding years if necessary,  
2 until the credit has been exhausted.

3 (f) This section shall remain in effect only until December 1,  
4 2017, and as of that date is repealed.

5 SEC. 5. Chapter 14.5 (commencing with Section 18995) is  
6 added to Part 6 of Division 9 of the Welfare and Institutions Code,  
7 to read:

8  
9 CHAPTER 14.5. THE STATE  
10 EMERGENCY FOOD ASSISTANCE PROGRAM  
11

12 18995. (a) On and after January 1, 2012, the State Department  
13 of Social Services shall establish and administer the State  
14 Emergency Food Assistance Program (SEFAP). The SEFAP shall  
15 provide ~~emergency food and funding for the provision of~~  
16 ~~emergency food to food bank networks and other organizations~~  
17 *food banks established pursuant to the federal Emergency Food*  
18 *Assistance Program (7 C.F.R. Parts 250 and 251) whose ongoing*  
19 *primary function is to facilitate the distribution of food to*  
20 *low-income households.*

21 (b) The State Emergency Food Assistance Program Account is  
22 hereby established in the Emergency Food Assistance Program  
23 Fund established pursuant to Section 18852 of the Revenue and  
24 Taxation Code, and may receive General Fund moneys, federal  
25 funds, and voluntary donations or contributions. ~~All moneys~~  
26 ~~received by the State Emergency Food Assistance Program~~  
27 ~~Account shall, upon appropriation by the Legislature, be allocated~~  
28 ~~to the State Department of Social Services for allocation to the~~  
29 ~~SEFAP and shall be used for the purchase, storage, and~~  
30 ~~transportation of food grown or produced in California. Moneys~~  
31 ~~in the fund shall not be used for the administrative costs of the~~  
32 ~~State Department of Social Services.~~

33 (c) *Notwithstanding Section 18853 of the Revenue and Taxation*  
34 *Code, the following shall apply:*

35 (1) *All moneys received by the State Emergency Food Assistance*  
36 *Program Account shall, upon appropriation by the Legislature,*  
37 *be allocated to the State Department of Social Services for*  
38 *allocation to the SEFAP and, with the exception of those*  
39 *contributions made pursuant to Section 18851 of the Revenue and*  
40 *Taxation Code and funds received through Parts 250 and 251 of*

1 *Title 7 of the Code of Federal Regulations, shall be used for the*  
2 *purchase, storage, and transportation of food grown or produced*  
3 *in California. Storage and transportation expenditures shall not*  
4 *exceed 10 percent of the SEFAP fund's annual budget.*

5 *(2) Notwithstanding paragraph (1), funds received by the State*  
6 *Emergency Food Assistance Program Account shall, upon*  
7 *appropriation by the Legislature, be allocated to the State*  
8 *Department of Social Services for allocation to the SEFAP as*  
9 *described in paragraph (1), and shall, in part, be used to pay for*  
10 *the department's administrative costs associated with the*  
11 *administration of the SEFAP.*